WHEN, UNDER THE SOCIAL COMPACT, LIBERTY OF CONTRACT MAY BE LIMITED*

The common law is the basis of most of the legal principles by which the people of this country are governed. The English "Common Law," which has been adopted with more or less change and addition by all the States of our Union except Louisiana, and which is applicable to many transactions within the scope of legislation authorized by the Constitution of the United States, embodies those rules of action which England has been centuries in developing. This law is sometimes called the unwritten law, because not contained in any extant legislative enactment, though it is found in permanent form in the decisions and judgments of courts and in political histories and legal commentaries. The "Common Law" although developed under a monarchical form of government, allows a wide scope to individual liberty. It says to all who are not under some legal disability, that they may make in ordinary matters any contract not prohibited by law that they desire, and that all such contracts when free from fraud, and upon a consideration good or valid in law, are binding on the parties thereto. To use a concrete example: If A has a horse of the reasonable value of $200.00, and B has a piece of antique furniture of no practical value, and A not being of unsound mind and under no legal disability, and without any fraud in the transaction, contracts to barter his horse for the furniture, the law says the contract is valid and rights growing out of such contract may be enforced by the courts.

If, however, A owns a public carrying railroad, a public telephone, gas or electric plant, or other similar enterprise serving the public, the public, through the Government—State or National—will not let A fix at will the price at which he will sell his transportation, his telephone service, his gas, or his electricity.

A, desiring to contract with B to hoe his garden, plead his cause in Court, build his machine, sell his goods, or administer

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to his child, may make such terms as he and B may agree upon, or as his situation may compel him to accept. But should A be a railroad, and wish to contract with B to transport B's property over its line of road, the State or the United States, according as the movement may be intra or inter-state, says this contract must be made, not by A and B alone, but by the law; at least the law may fix a limit beyond which the charge shall not go, and may compel A to make the same contract with C that was made with B. In the one case the law, both the common law and existing statute law, allows full liberty of contract, and in the other, the law regulates the terms of the contract.

Why may not A fix the price of a service he proposes to furnish at his own cost and labor, when he is allowed to fix at will the price at which he will sell a particular piece of property he may own? Various reasons are given for the application of these different, and to the superficial thinker, antagonistic rules of law. We are told that railroads, telephone, telegraph, gas, electric, water, and other similar corporations are *quasi* public corporations, meaning by this phrase, that they perform what is almost a function of the State, marking a resemblance while connoting a difference.

This reason applies more forcibly to public carriers, though the law relating to these illustrates, to a greater or less extent, other public service corporations. While the State may, and some States do, own railroads, and while it is sometimes insisted that all railroads should be owned by the Government, State or National, it does not necessarily follow that the transportation of private persons and their property from one place to another is a governmental function to the exclusion of private enterprise. It is true that railroads possess the power of eminent domain, which is an attribute of sovereignty delegated to them by the Sovereign State. This power is the right to take, upon making fair compensation, land for use by the railroad without the consent of the owners. A may want B's land never so much, but unless B will sell, A cannot get it. If however, A incorporates a railroad, the corporation may force B to take a price fixed through the processes of law and give the land for the use of A's railroad. A railroad therefore possesses one of the

powers of sovereignty, whether or not the functions it performs are public or only *quasi* public. The fact, therefore, that a public carrier may take private property upon paying a compensation fixed by arbitrators without the consent of the owner, differentiates such carrier from the ordinary citizen, and furnishes a reason why the contracts of a public carrier should be regulated by the State, while those of a private citizen not possessing any franchise are not subject to the same regulation.

The possession and use of a public franchise is what is meant when the corporation is designated as *quasi* public. Corporations to furnish water, gas, electricity, telephones, telegraph companies, and corporations to operate street cars and ferries have a public franchise. Individuals performing the same service and possessing the same franchise would be subject to like regulation as a corporation.

The possession of a portion of the rights of sovereignty though one reason why the charges of public carriers are regulated and their contracts controlled by the Sovereign, State or Nation, is not the only reason for the control or regulation of business. In what is known as the Granger cases the Supreme Court of the United States sustained laws regulating charges of business having no governmental powers or franchises, as well as laws regulating the charges of railroads. In one of these cases the laws of Illinois regulated the amount that warehouses should charge for storing grain. Manifestly a warehouse is not a public corporation in any sense, and receives no special rights of franchise from the State. It is true, a warehouseman serves the public, so does a groceryman. The law may regulate what the warehouse charges; it has never attempted to fix the amount of profit the groceryman may make. In discussing the right of the State of Illinois to regulate the charges of warehousemen, Chief Justice Waite, speaking for the majority of the Supreme Court of the United States said:

"Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid and that it is already of great importance. And it must also be conceded that it is a business in which the whole public

has a direct and positive interest. It represents, therefore, a case for the application of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel these owners to grant the public an interest in their property, but to declare their obligations, if they use it in this particular manner."

The reason here relied upon is that the industry is of "great importance," and "that it is a business in which the whole public has a direct and positive interest." The words "established principles of social science" used by the Great Chief Justice have reference to the principles long applied in England under the Common Law. Under these principles of social science, bakers, innkeepers, ferrymen, carters, wharfingers, hackney coachmen, wagoners, as well as all other public carriers, were regulated by law.

As early as the third year of the reign of William and Mary a law was enacted with this preamble:

"And whereas divers wagoners and other carriers, by combination amongst themselves, have raised the prices of carriage of goods in many places to excessive rates, to the great injury of the trade."

This quotation from the preamble of this English statute used by Chief Justice Waite in the Illlnois warehouse case, points out another reason frequently urged by courts why certain charges should properly be subject to regulation by law. This reason in the language of the English statute is "that by combination amongst themselves have raised the prices."

Lord Ellenborough in a case decided one hundred years ago, expressed the same reason as follows:

"There is no doubt that the general principle is favored, both in law and justice, that every man may fix what price he pleases upon his own property, or the use of it; but if, for a particular purpose, the public have a right to resort to his premises and make use of them, and he have a monopoly in them for that purpose, if he will take the benefit of that monopoly, he must, as an equivalent perform the duty attached to it on reasonable terms."

In the same case in which Lord Ellenborough used the above quoted language, La Blanc, another of the judges, pointed out that the warehouses, the regulation of which was then under discussion, were given a privilege by act of Parliament in that they had a special and exclusive right to bond wines. This legislative grant made them *legal* monopolies.

The principle that when private property is "affected with a public interest, the public may prescribe a limit to that which shall be charged for the use of such property" was announced by Lord Chief Justice Hale about two hundred and fifty years ago.

In the Illinois Warehouse case the principles of the Common Law were reduced to this statement:

"Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."

In the Kansas City Stock Yards case there was involved a law of Kansas "defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof." In this case the late Mr. Justice Brewer delivered the opinion of the Supreme Court, and after referring to the Illinois Warehouse case said:

"It may be conceded that the State has the power to make reasonable regulations of the charges for services rendered by the stock yards company. Its stock yards are situated in one of the gateways of commerce, and so located that they furnish important facilities to all seeking transportation of cattle. While not a common carrier, nor engaged in any distinctly public employment, it is doing a work in which the public has an interest, and, therefore, must be considered as subject to governmental regulations."

In the further course of this opinion Mr. Justice Brewer dis-

tinguished between those "cases in which a public service is distinctly intended and rendered," and those in which "without any intent of public service, the owners have placed their property in such a position that the public has an interest in its use." The learned Justice proceeding with the opinion suggested that purely public service corporations, "cases in which a public service is distinctly intended and rendered," are subject to greater regulation than those in which incidentally the "public has an interest" in the use of their property.

The decision refers only to the second class, those who, incidentally and not with an original intention so to do, have placed their property in such a position that the public has an interest in its use. Of this class Mr. Justice Brewer said:

"In reference to this latter class of cases, which is alone the subject of present inquiry, it must be noticed that the individual is not doing the work of the State. He is not using his property in the discharge of a purely public service. He acquires from the State none of its governmental powers. His business in all matters of purchase and sale is subject to the ordinary conditions of the market and the freedom of contract. He can force no one to sell to him, he cannot prescribe the price which he shall pay. He must deal in the market as others deal, buying only when he can buy and at the price at which the owner is willing to sell, and selling only when he can find a purchaser and at the price which the latter is willing to pay. If under such circumstances he is bound by all the conditions of ordinary mercantile transactions he may justly claim some of the privileges which attach to those engaged in such transactions. And while by the decisions heretofore referred to he cannot claim immunity from all State regulation he may rightfully say that such regulation shall not operate to deprive him of the ordinary privileges of others engaged in mercantile business."

New York State adopted a law "to regulate the fees and charges for elevating, trimming, receiving, weighing and discharging grain by means of floating and stationary elevators and warehouses."

This law was sustained by the highest court of the State of

New York in an able opinion based upon the police power of the State and the "practical monopoly enjoyed by those engaged in the business of elevating grain." It was pointed out that the monopoly both in the business of elevating grain in New York and storing grain in Illinois was not a legal monopoly, that is, a monopoly created by law, but was a monopoly because of the conditions under which the business was done. In the course of the opinion the New York Court announced this principle:

"The very existence of government presupposes the right of the sovereign power to prescribe regulations demanded by the general welfare for the common protection of all. This principle inheres in the very nature of the social compact."

The Supreme Court of the United States, following the New York Court, sustained the law, adopting substantially the principles above quoted.

Mr. Justice Brewer, with whom concurred Mr. Justice Field and Mr. Justice Brown, wrote a vigorous dissenting opinion. This dissent is especially valuable as showing what these three able Judges thought of the monopoly argument. He said:

"It is suggested that there is a monopoly, and that that justifies legislative interference. There are two kinds of monopoly: one of the law, the other of fact. The one exists when exclusive privileges are granted. Such a monopoly, the law which creates alone can break; and being the creation of law justifies legislative control. A monopoly of fact any one can break, and there is no necessity for legislative interference. . . . If there be a monopoly, it is one of fact and not of law, and one which any individual can break.

"The paternal theory of government is to me odious. The utmost possible liberty to the individual, and the fullest possible protection to him and his property, is both the limitation and duty of government. If it may regulate the price of one service, which is not a public service, or the compensation for the use of one kind or property which is not devoted to a public use, why may it not with equal reason regulate the price of all service, and the compensation to be paid for the use of all property? And if so, *Looking Backward* is nearer than a dream."

In this, as in prior cases, the "police power" of the State was relied on. What is this power? In general terms this question is answered by Mr. Justice Field as follows:

"The power of the State . . . . to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

In another case decided in 1905, Mr. Justice Harlan delivering the opinion of the Supreme Court of the United States said: "The police power of a State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety."

These quotations are not definitions of the police power, because to define a term "is to state its limitations or to enumerate the attributes which it implies." All that has been attempted is to say that a certain state of facts brings a case within or without that power, and to formulate a partial definition.

Laws limiting the hours of employment of workmen in all underground mines, prescribing conditions upon which work of a public character may be performed for a municipality, providing how wages of miners shall be paid, providing for compulsory vaccination; Sunday laws, laws limiting the times when washing and ironing may be done in public laundries; laws limiting the height of buildings; laws relating to employment of women and children; separating negroes and whites in schools, regulating the sale of liquor; fixing fire limits, pure food laws, laws for testing ores, and regulations of a similar character, have been sustained and illustrate the scope of the police power. The Supreme Court of the United States, by a bare majority, and I believe, on inconclusive reasoning, held that a law of New York limiting hours of labor in a bakery was beyond the scope of the police power and invalid.

The "incorporation of the company, by which numerous parties are permitted to act as a single body for the purposes of its creation," has been relied on with other facts as one reason justifying legislative control.

To allow individuals to incorporate,—that is, to permit "a collective and changing body of men" to have "the character and properties of individuality,"—is a privilege, a right granted by the Sovereign, and the grant of such franchise is subject to conditions and regulations by the grantor, the sovereign power. As such corporations have been held to be "persons" under the protection of the Fourteenth Amendment to the Constitution of the United States, the mere fact that a corporation has been created by the State without conditions or limitations in the act of creation, would not justify the regulation of the corporation when in like case an individual was not regulated.

The price to be charged for water may be regulated, the Court saying: "That it is within the power of the government to regulate the prices at which water shall be sold by one who enjoys a virtual monopoly of the sale we do not doubt."

The reasons hereinbefore given why certain businesses may be regulated are not exclusive, and other limitations on the freedom of contract may be necessary because of developing conditions of life and trade. It has been seen that our basic law regards liberty of contract as the rule. Berolzheimer, a thoughtful foreign observer of the common law, speaking of the distinguishing mark of that system of laws says such mark is the "unlimited valuation of individual liberty and respect for individual property."

Blackstone's definition of Political Liberty also expresses the idea. This great commentator citing Justinian's *Institutes*, defines such liberty as follows:

"Political . . . or civil liberty . . . is no other than natural liberty so far restrained by human laws, and no farther, as is necessary and expedient for the general advantage of the public."

While liberty of contract is the rule, this liberty is subject, as shown in Blackstone's definition above, to the rights of society. What should, in one state of society, be free from control under the social contract, may, in the evolution of social life, become a necessary subject of regulation:—"Social Life," says a writer on ethics, "like all life, is change and development. Law would be neglecting one of its most important functions if it ceased to meet the demands of this ceaseless evolution."

Law has been in the past, and should remain in the future, conservative. Stability of law is necessary to safety of person and property. But this does not mean that when "all sciences put off their dirty clothes" only law should "remain in her rags." While Law should adapt her principles to the development of social conditions, she should not change those principles to meet the demands of the unthinking mob. That law should develop, should draw from all available sources, in order to meet the needs of social changes, is well recognized, and these principles of development and flexibility in our law are nowhere better stated than by Mr. Justice Matthews, who said:

"This flexibility and capacity for growth and adaptation is the peculiar excellence of the common law. . . . The Constitution of the United States was ordained, it is true, by descendents of Englishmen, who inherited the traditions of English law and History; but it was made for an undefined and expanding future, and for a people gathered and to be gathered from many nations and of many tongues. And while we take pride in the principles and institutions of common law, we are not to forget that in lands where other systems of jurisprudence prevail, the ideas and processes of civil justice are also not unknown. Due process of law, in spite of the absolutism of continental governments, is not alien to that code which survived the Roman Empire as the foundation of modern civilization in Europe, and which has given us that fundamental maxim of distributive justice—*suum cuique tribuere* (to give to each his own). There is nothing in Magna Charta, rightly construed as a broad charter of public right and law, which ought to exclude the best ideas of all systems and of every age; and as it was the characteristic principle of the common law to draw its inspiration from every fountain of justice, we are not to assume that the sources of its supply have been exhausted. On the contrary, we should expect that the new and various experiences of our own situation and system will mould and shape it into new and not less useful forms."

It is apparent that the boundary line between what is and what is not a proper subject of regulation is dim and indefinite, if not indefinable, because this line must of necessity shift to

meet new conditions of social evolution. By considering the instance where there has been a determination of the question on which side a particular regulation falls, we may deduce some general principles which, if they do not furnish an absolute rule, will guide us when we seek to answer the question of whether or not a particular regulating law is valid.

As to railroads, we have seen that they are public highways, are possessed of the right of eminent domain,—a function of the State,—are necessary to the public welfare, and are, from their inherent nature, more or less of a monopoly. There is now no dispute that the combination of these facts makes necessary and proper the regulation by the sovereign power of these enterprises.

The regulation of warehouses, stockyards, and elevators cannot be justified by all the facts that apply to railroads. Neither the warehouse, the stockyard, nor the elevator possesses any function of the State: they do not monopolize or use a public highway. It may be said that the business is "affected with a public interest," though this phase of Lord Hale's is somewhat indefinite. The business of the warehouses regulated by the Illinois Law, of the elevators regulated by that of New York, and of the stockyards regulated by the law of Kansas, was important, affecting a large part of the general public, and was, in fact, to some extent, a monopoly. "Common good," "welfare of the State" and "public interest" are phrases used by the Supreme Court in discussing this question. These phrases must be considered as applying to the *policy* of regulation once the *right* of regulation is conceded.

The fundamental principles upon which is based the right to regulate interests were stated by the Supreme Court in the New York case, in giving the reasons why the New York Court sustained the law. The Supreme Court said:

"The underlying principle was, that business of certain kinds holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation; and that the court rested the power of the legislature to control and regulate elevator charges upon the nature and extent of the business, the existence of a virtual monopoly, the benefit de-

rived fron the Erie Canal's creating the business and making it possible, the interest to trade and commerce, the relation of the business to the property and welfare of the State, and the practice of legislation in analogous cases, collectively creating an exceptional case and justifying legislative regulation."

Ferries and turnpikes possess a franchise, that is a privilege granted them by the State, and they fall into the same class as railroads.

The business of a baker is one of vital importance to the public. This business has been regulated in England for centuries, which fact itself is presumptive evidence in favor of the existence of the right and the necessity of regulation. Besides, in the days when bakeries were first regulated, there was room for only one in the average community and such bakery was a natural monopoly.

Water, light, and telephone companies usually enjoy the use of the public streets, which is a franchise, or grant from the State, and they all furnish to the public something of vital importance or practical necessity. They are also in most cases monopolies "of law."

Laws limiting the hours of labor, prescribing who may and who may not labor under certain conditions of age or sex, and fixing regulations for the protection of the laborers, rest upon the right and duty of the government to protect the lives and health of its people. Such laws are not strictly analogous to laws fixing charges, though they may rest on the same basic principles.

That a particular business is a monopoly is frequently given as the justification of a law fixing its charges. Monopolies are classified as *monopolies in law* and *monopolies in fact*, and monopolies in fact may be further divided into monopolies resulting from the character or surroundings of the business, and monopolies that are purely artificial and created by the management of the particular business.

Monopolies in law may be described as being created by the law; street railroads are necessarily more or less of a legal monopoly. The law, by granting the right to use the streets for tracks, practically excludes the use of such streets by a competing

railroad. Water, gas, and telephone companies are, because of the same or analogous facts, legal monopolies. Ferries, telegraph lines, and steam railroads, partake in their nature of the same qualities and are legal monopolies.

A monopoly "in fact," from the nature of the business, is illustrated by the New York elevator and the Illinois warehouse cases. In each of these cases, the situation made it impossible to have an unlimited competition, and therefore from its very nature the business was a monopoly to some extent.

A monopoly in fact, not arising from the nature of the business but made by the business methods of its creators, is one such as the Courts have decreed the American Tobacco Company, the Standard Oil Company, and other companies to be.

These monopolies are not created by law, and are not inherent in the business; they result from the power a particular business has acquired to control the price and distribution of a particular commodity or commodities.

That a monopoly of law should be controlled by law is now practically an undisputed principle in political science. Mr. Justice Brewer forcibly states the reasons for the principle as follows: "Such a monopoly, the law which creates alone can break: and being the creation of law justifies legislative control."

Monopolies resulting from the nature of the business, a creation of natural conditions rather than a creation of law, we have seen have been regulated by law. Such regulation has not been had, however, without vigorous dissent. Mr. Justice Brewer's dissent in the New York Elevator Case already quoted from, fails to distinguish between monopolies inhering in a business and monopolies purely artificial, which failure may account to some extent for the conclusion reached by him. The majority of the Supreme Court of the United States had designated the business in the New York case as "an actual monopoly," making no distinction between the different ways in which a monopoly may be produced. I do not recall ever having seen a sub-classification of monopolies in fact into natural and artificial, such as I have here made, though in the decision of the cases the courts seem to have acted on some such dis-

tinction. The regulation of natural monopolies has been practiced so long that notwithstanding the dissent, it may now be stated that the right of the State to make such regulation is established.

Can an artificial monopoly be regulated, or is destruction the only treatment of this modern development of business? The preamble to the Statute of William and Mary hereinbefore referred to had reference to an artificial monopoly, and this preamble was relied upon by the United States Supreme Court in its opinion in the Illinois Warehouse case as an argument in favor of the decision reached, that warehouses could be regulated. In the New York Elevator Case, in arguing to sustain the law, the business was shown to be "an actual monopoly," without apparently making any distinction in the argument between natural and artificial monopolies. Mr. Justice Brewer, in dissenting, describes an artificial monopoly, evidently regarding the opinion of the majority of the Court as having sustained regulation of such a monopoly. As an argument against the opinion of the majority, and as a reason why the monopoly which he had in mind should not be regulated, he says:

"A monopoly of fact (artificial monopoly) any one can break, and there is no necessity for legislative interference. It exists where anyone by his money and labor furnishes facilities for business which no one else has."

While in England, whose system of laws we have adopted, purely artificial monopolies were regulated, and while some of the dicta of our courts may indicate individual opinions in favor of the validity of such regulation, it cannot be said as yet that laws fixing the price of commodities controlled by a trust would be held valid.

Law is not a science, though it is not without certain scientific principles. So in the limitation on the freedom of contract there are some well defined general rules. It is in the application of the abstract principles to concrete cases that difficulty arises. Mr. Justice Holmes says: "General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise." This statement of the learned jurist, it seems to me, does less

than justice to our system of jurisprudence. If our major premises are clear and correct, we frequently can form a minor from concrete facts and thereby reach a conclusion which will rest on more than mere intuition.

What general principles may we deduce from the foregoing historical sketch?

When the public grants part of its power to a corporation, as the right of eminent domain, there is justification in the public's reserving the right to compel the execution of this power for the general good. That such power has been or may be used to the detriment of the general welfare, furnishes the necessity for the public regulation of that use. For the same reason, the grant of other rights by the public, such as the right to operate a ferry, or use the public streets, makes regulation of the business using the right so granted necessary and proper.

That a business by its nature is, or is likely to be, a monopoly furnishes a justification for its regulation, because what nature gives in common to all belongs to all the public, at least to the extent that rights so given should not be used to the injury of the public. The necessity of such regulation is, therefore, the same as where governmental rights are granted.

That the supreme importance of the business of supplying certain things, as bread, may make necessary the regulation of such business by and in behalf of the public, is apparent. That one who enters such business knows it has long been regulated, justifies the regulation.

We may safely lay down this general rule:

Where there has been a grant of part of the Sovereign power, or a grant of the right to use what belongs to the public, or there exists a legal or natural monopoly, or where there has long been a custom to regulate, regulation is justified, and should be had as necessity demands.

Should we go farther and say:

Where there exists an artificial monopoly created by the money and labor of a man or of associated men, which monopoly is used to the injury of the public, the good of all justifies and furnishes the necessity for the regulation of such monopoly?

This principle has not yet been authoritatively announced.

Is it a corrollary from the principles that have been announced and applied? Mr. Justice Brewer, Mr. Justice Field, and Mr. Justice Brown seemed so to think, because of the decision in the New York Elevator case. These eminent jurists, I believe, gave too wide a scope to the decision of the majority of the Court, because of their failure to differentiate between a natural and an artificial monopoly.

An artificial monopoly is the creation of the individual and is his; a legal monopoly is the creation of the whole social organization, and in part belongs to each member of that organization; a natural monopoly results from the forces of nature and no individual can have the right to use a power so created to the detriment of other creatures of nature.

Before, then, we can find in the decided cases justification for regulating artificial monopolies, we must seek a more general principle than has heretofore been specifically relied on.

The English statute of William and Mary heretofore referred to, was placed, as stated in the preamble, on the fact of a "combination to raise prices," though the fact that the persons regulated were carriers using a public highway might equally have justified the law.

In the Warehouse case from Illinois, and the Elevator case from New York, "virtual monopoly" and "actual monopoly" were phrases used, but each of these cases dealt with what was in part at least, a natural monopoly. That carriers are monopolies is frequently given as one reason why they may be regulated, though this reason is always coupled with other reasons.

If we take the common law maxims *sic utere tuo ut alienum non lædas*, and *salus populi est susprema lex*, the former of which was relied on by the Chief Justice in the Illinois case, and the latter of which, though trite and frequently used by the demagogue, is nevertheless, like the first, an expression of the highest ethics, we find justification for regulating artificial monopolies. That necessity exists for such regulation or for suppression is generally believed. Regulation would conserve the economic value there is in monopolies, and might be promotive of greater good than the attempts, usually abortive, to destroy them.

Whether or not laws would be valid that should fix the price

of commodities controlled by the combinations popularly designated as trusts, is a question that cannot be answered.

The law of New York fixing the hours of labor in bakeries was held invalid by five, and valid by four, members of the United States Supreme Court. A resignation or death of one man and the appointment of his successor might have rendered the law valid, a change of opinion of one of the five would have sustained the law. When the regulation proposed has never yet been sustained and is near the border line between what is valid and what is invalid, it would be mere speculation to say what would be the final determination.

The nine men composing the Supreme Court of the United States have greater power to determine the rules by which people shall be governed than any other man or body of men other than an Absolute Monarch. They compose the great court which finally says whether or not a limitation of the freedom to contract is valid or invalid. They are lawyers and great lawyers; they are usually men who have lived over two generations; they have the wisdom of age, the conservatism of the law, and while they may sometimes delay a proper evolution of the law, they are not likely to allow an improper revolution in legal principles.

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